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Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

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Tariff Commission Notice

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 74–12)

Abstracts of Customs Service decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 3, 1974.

The following abstracts of United States Customs Service decisions of general interest are published as a matter of information and guidance.

(133.121)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

DRAWBACK

T.D. 74–12(1) *Wool, method of determining quantity used.*—In order to file proper drawback claims on wool matchings manufactured with the use of grease wool, it is necessary to determine the quantity (on the basis of clean content) of grease wool required to manufacture the wool matchings. Some manufacturers have found it difficult and expensive to determine the quantity of grease wool by coring and measuring and have also not been able to use the procedure established by T.D. 72–340(3). Therefore, in cases where it is impossible to use the procedure established by T.D. 72–340(3), a procedure has been approved whereby the quantity (on the basis of clean content) of grease wool required to manufacture the wool matchings may be determined by the manufacturer as follows:

(a) Compiling a schedule of the maximum and minimum commercially probable clean content yields for each by-product manufactured from the input grease wool;

(b) Determining the clean content of the wool matchings by coring and measuring;

(c) Determining the quantity (on the basis of clean content) of grease wool to be designated by using the maximum commercially probable clean content yield for each by-product;

(d) Computing the drawback claim by using in each operation of the computation the clean content yield, either the maximum or the minimum, whichever is the more favorable to the Government.

Headquarters letter dated November 12, 1973. (DRA–1–09)

MARKING

T.D. 74–12(2) *Danmark, marking of country of origin.*—The marking "Danmark" on articles of jewelry imported from Denmark is an acceptable variant spelling of the English name of the country of origin. Headquarters letter dated September 24, 1973. (MAR–2–05)

T.D. 74–12(3) *Socket wrench set components, marking of country of origin.*—The processing of fully machined components of socket wrench sets by heat treating; grinding, vibrating, and polishing to remove scale or blemishes resulting from the heat treatment; plating; assembly; and inspection and identification marking, does not result in a substantial transformation of the imported components, within the meaning of section 134.35 of the Customs Regulations (19 CFR 134.35). Accordingly, the processor is not considered the ultimate purchaser of the imported components. Headquarters letter dated November 1, 1973. (MAR–2–05)

TARIFF CLASSIFICATION

T.D. 74–12(4) *Angles, shapes and sections, aluminum. Aluminum shapes in coils.*—A wrought aluminum product in coils which is not of solid round, rectangular, hexagonal, or octagonal cross section and is not tubular, nor conforms to the definitions set forth in Headnote 3(a), (b), and (c), Subpart D, Part 2, Schedule 6, TSUS, for bars, plates, sheets, strips, or rods, is classifiable under the provision for angles, shapes, and sections, * * * wrought, of aluminum, in *item 618.17*, TSUS. Headquarters letter dated May 2, 1973. (423.2)

T.D. 74–12(5) *Angles, shapes, and sections, steel. Channel.*—A galvanized, semi-elliptical, steel channel that is cold rolled and weighs over 0.29 pound per linear foot, which is used as a facing element in an earth retaining wall, is classifiable under the provision for angles, shapes, and sections, drilled, punched, or otherwise advanced, * * * other than alloy steel, in *item 609.84*, TSUS. Headquarters letter dated July 12, 1973. (422.313)

T.D. 74–12(6) *Animal feeds. Pelleted grain screenings, gelatin binder.*—Pelleted grain screenings, utilizing gelatin derived from the natural protein in the screenings as a binder, are classifiable under the provision for animal feeds * * *, nspf * * *, other, in *item 184.75*, TSUS. Headquarters letter dated May 10, 1973. (461.5)

T.D. 74–12(7) *Articles of plastics. Articles of textile materials. Articles of steel. Canopies, airhalls, and tents.*—Canopies, airhalls, and tents, in chief value of woven textile fabrics coated or laminated on both sides with nontransparent plastic, are classifiable under the provision for articles nspf, of rubber or plastics, * * * other, in *item 774.60*, TSUS. Airhalls and tents, in chief value of woven textile fabrics coated on one side with nontransparent plastic, are classifiable under *item 774.60*, TSUS, to the extent that the nontransparent plastic forms the outer surfaces of the articles. Canopies, in chief value of woven textile fabrics partially coated with nontransparent plastics, are classifiable under the provision for articles nspf, of textile materials, * * * not ornamented, * * * of man-made fibers, * * * other, in *item 389.60*, TSUS, since the nontransparent plastic forms neither the outer surface of the articles, nor the only exposed surface of the fabric. Canopies, airhalls, and tents, in chief value of steel poles, wires, hooks, and anchors, are classifiable under the provision for articles of iron or steel, * * * other, in *item 657.20*, TSUS. Headquarters letter dated March 6, 1973. (475.443)

T.D. 74–12(8) *Articles nspf, of plastic. Hollow polyethylene balls.—Cover balls.*—Hollow polyethylene balls, 1 and 1½ inches in diameter, used to cover the surface of the water in swimming pools to lessen heat loss by evaporation, are classifiable under the provision for articles nspf, of rubber or plastics, * * * other, in *item 774.60*, TSUS. Headquarters letter dated June 15, 1973. (417.60)

T.D. 74–12(9) *Articles nspf, of wood. Structural wood beams. Steelam beams.*—A steelam beam, consisting of two planks of lumber 2 inches thick and 10 inches wide, jointed by a steel strip with nail-like projections to form a structural beam 4 inches thick and 10 inches wide, is classifiable under the provision for articles nspf, of wood, in *item 207.00*, TSUS. Headquarters letter dated May 24, 1973. (481.21)

T.D. 74–12(10) *Bananas, dried. Freeze-dried bananas.*—A freeze-dried banana, which is a granular product with the grains pale yellow in color as well as some black specks, and containing no additives, is classifiable under the provision for bananas, * * * dried, in *item 146.42*, TSUS. Headquarters letter dated May 31, 1973. (463.122)

T.D. 74–12(11) *Benzenoid drugs. Mixtures of two or more organic compounds.*—A blend of non-benzenoid amino acids and L-Tryptophan, an amino acid derived from benzenoid sources, is classifiable under the provision for other benzenoid drugs, in *item 407.85*, TSUS. Headquarters letter dated May 2, 1973. (417.51)

T.D. 74–12(12) *Benzenoid products. Thiophenol.*—Thiophenol is classifiable under the provision for cyclic organic chemical products in

any physical form having a benzenoid, quinoid, or modified benzenoid structure, * * * other, in *item 403.60*, TSUS. Headquarters letter dated July 3, 1973. (332.1)

T.D. 74–12(13) *Benzenoid surface-active agents. Di-sodium dodecyldiphenyl ether di-sulfonic acid.*—Di-sodium dedocyldiphenyl ether di-sulfonic acid is classifiable under the provision for benzenoid surface-active agents, in *item 405.35*, TSUS. Headquarters letter dated May 31, 1973. (417.51)

T.D. 74–12(14) *Chain. Connecting links.*—"C" shaped devices, or triangular shaped devices with an opening on one side, composed of 5/16 inch steel essentially round in cross section with the ends threaded and joined together by a nut, and which function as links to connect pieces of chain and make other chain connections when in use, are classifiable under the provision for chain and chains, * * * the links of which are of stock essentially round in cross section, and parts thereof, * * * 5/16 inch or more but under 3/8 inch in diameter, in *item 652.27*, TSUS, and not under *item 657.20*, TSUS. C.D. 4020, followed. T.D. 56237(14), revoked. Headquarters letter dated May 22, 1973. (424.44)

T.D. 74–12(15) *Chain. Pintle chain. Conveyor chain.*—Pintle chain, over 2-inch pitch, of iron or steel, with or without attachments welded to its links at intervals, chiefly used in sprocket-driven conveyors, such as sludge collectors, is classifiable under the provision for chain and chains, * * * of base metal not coated or plated with precious metal, of iron or steel, chain or chains used for the transmission of power * * *, other, in *item 652.18*, TSUS, and not under the provision for chain and chains, * * * of base metal not coated or plated with precious metal, * * * other, including parts, in *item 652.35*, TSUS, or under the provision for conveyors, * * * and parts thereof, in *item 664.10*, TSUS. T.D. 71–83(19), noted. Headquarters letter dated May 24, 1973. (511.1)

T.D. 74–12(16) *Cheddar cheese.*—Cheese made of white cheddar, a blend of 4 cheeses, whey powder, skim milk powder, kling, and water, including a dash of wine for color, is classifiable under the provision for cheddar cheese * * * other, in *item 117.20*, TSUS, and subject to quantitative restrictions provided by *item 950.08A*, TSUS. Headquarters letter dated June 15, 1973. (452.53)

T.D. 74–12(17) *Explosives. Nitro carbo nitrate.*—Nitro carbo nitrate, also known as ANFO, a blasting agent consisting of ammonium nitrate sensitized with diesel oil, is classifiable under the provision for

explosive substances nspf, in *item 485.50*, TSUS. Headquarters letter dated July 6, 1973. (415.5)

T.D. 74–12(18) *Hides and skins. Pork back skins.*—Pork back skins, which are free of adhering flesh, are classifiable under the provision for hides and skins * * *, raw or uncured, or dried, salted, limed, pickled, or otherwise cured, * * *, in *item 120.20*, TSUS. Headquarters letter dated May 15, 1973. (452.15)

T.D. 74–12(19) *Live animals. Leaf-cutter bee, larvae.*—Larvae of the leaf-cutter bee are classifiable under the provision for live animals, * * *, other, in *item 100.95*, TSUS. Headquarters letter dated May 21, 1973. (534.2)

T.D. 74–12(20) *Other compounds containing a triazine ring. 4-amino - 6 - t - butyl - 5 - oxo - 3 - thiono - 2,3,4,5 - tetrahydro - 1,2,4 - triazine.*—4 - amino - 6 - t - butyl - 5 - oxo - 3 - thiono - 2,3,4,5 - tetrahydro-1,2,4-triazine is classifiable under the provision for other compounds containing a triazine ring, in *item 425.10*, TSUS. Headquarters letter dated May 4, 1973. (417.0)

T.D. 74–12(21) *Paper boxes, covered or lined with coated papers. Candy boxes, vat-lined.*—Candy boxes, made of paperboard "vat-lined" with a top layer of coated paper, are properly classified under the provision for boxes of paper, of paperboard, of papier-mache, or of any combination thereof, covered or lined with coated papers * * *, in *item 256.48*, TSUS. Headquarters letter dated July 24, 1973. (483.55)

T.D. 74–12(22) *Standard wood moldings. Finger-jointed and end-glued standard hardwood moldings.*—Finger-jointed and end-glued standard hardwood moldings are classifiable under the provision for * * * standard wood moldings, not drilled or treated, * * * other, in *item 202.64*, TSUS. Headquarters letter dated May 30, 1973. (481.3)

T.D. 74–12(23) *Sulfur compounds. 3-hydroxy-1-propanesulfonic acid sultone.*—3-hydroxyl-1-propanesulfonic acid sultone is classifiable under the provision for sulfur compounds, * * *, in *item 429.60*, TSUS. Headquarters letter dated May 11, 1973. (417.51)

T.D. 74–12(24) *Textile assistants. Alkyl polyglycol ether.*—Alkyl polyglycol ether, a textile assistant, is classifiable under the provision for products chiefly used as assistants in preparing or finishing textiles, nspf, in *item 493.50*, TSUS. Headquarters letter dated May 14, 1973. (417.52)

T.D. 74–12(25) *Textile fabrics. Layered material, cotton-rubber.*—A 3-layered material consisting of 2 surface layers of woven cotton fabric and a middle, nonvisible layer of rubber, is classifiable, if the

rubber is not laminated to both fabrics in sheet form, under the provision for tetxile fabrics, * * * nspf, of cotton, in *item 359.10*, TSUS. Headquarters letter dated June 14, 1973. (471.2)

T.D. 74–12(26) *Textile fabrics. Machine clothing.*—A woven imprinting fabric of polyester monofilaments, cut and seamed to fit a unit in a paper-making machine between the forming section and the Yankee dryer drum, which transports the paper web while it is being processed and also imparts an essential knuckling effect to the paper, is classifiable under the provision for clothing for paper-making * * * machines, nspf, of textile materials, * * * of man-made fibers, in *item 358.50*, TSUS. Headquarters letter dated June 28, 1973. (471.611)

T.D. 74–12(27) *Textile fabrics. Needle-punched, nonwoven fabric-woven base.*—A needle-punched, nonwoven fabric with a woven base, in chief value of wool, not a felt for tariff purposes, is classifiable under the provision for * * * nonwoven fabrics, * * * of wool, * * * other, in *item 355.18*, TSUS. Headquarters letter dated May 14, 1973. (473.35)

T.D. 74–12(28) *Textile fabrics. Velvet. Velveteen.*—Velveteen fabric is made with a filling pile, and velvet is made with a warp pile. Accordingly, fabric made with a warp pile, although referred to as velveteen, is classifiable under the provision for pile fabrics, * * * of cotton, * * * velvets * * *, in *item 346.35*, TSUS. Headquarters letter dated May 16, 1973. (471.231)

T.D. 74–12(29) *Toys, nspf. Toothbrush.*—A toothbrush measuring 12 inches long, which is not suitable for normal use, is classifiable under the provision for toys, * * *, nspf, * * * other, in *item 737.90*, TSUS. This article is not classifiable under the provision for practical joke articles, in *item 737.65*, TSUS, inasmuch as it does not place the user at a humorous disadvantage. C.D. 3037, noted. Headquarters letter dated January 29, 1973. (492.13)

T.D. 74–12(30) *Vegetable oil cake. Oil-cake meal. Sunflower meal.*—Sunflower meal, made from crushed sunflower seeds with oil extracted by a solvent, is classifiable under the provision for soybean and other vegetable oil cake and oil-cake meal, * * * other, in *item 184.52*, TSUS. Headquarters letter dated May 22, 1973. (461.5)

T.D. 74–12(31) *Vegetable oils. Pumpkin seed oil, semame oil capsule-food supplement.*—Pumpkin seed oil and sesame oil in capsule form designed as a food supplement, is classifiable under the provision for artifical mixtures * * * of vegetable oils, * * * other, in *item 178.30*, TSUS. Headquarters letter dated May 15, 1973. (418.131)

T.D. 74–12(32) *Vegetables, reduced to flour. Soybean flour.*—Soybean flour is classifiable under the provision for vegetables, * * * dehydrated, * * * reduced to flour, in *item 140.75*, TSUS. Headquarters letter dated May 25, 1973. (461.511)

T.D. 74–12(33) *Wearing apparel. Ornamentation. Imitation leather, textile fabrics.*—A girl's cotton corduroy coat, decorated with 5/8-inch strips of imitation leather, is considered ornamented for tariff purposes and classifiable under the provisions for * * * girls' * * * wearing apparel, * * * ornamented, * * * of cotton, in *item 382.00*, TSUS. The imitation leather strips are made from a woven fabric which has been coated, filled, or laminated on one side with a plastics material. Therefore, the strips, themselves, are textile fabrics and constitute ornamentation within the meaning of Headnote 3(a)(iii), Schedule 3, TSUS. Headquarters letter dated May 8, 1973. (471.232)

T.D. 74–12(34) *Wearing apparel. Ornamentation. Trademarked stitching.*—Women's denim shorts, with double rows of orange colored stitching forming a registered trademark on the back pockets, are considered ornamented for tariff purposes and classifiable under the provision for women's * * * wearing apparel, * * * ornamented, * * * of cotton, in *item 382.00*, TSUS. C.D. 3815, noted and followed. Headquarters letter dated May 8, 1973. (471.3)

T.D. 74–12(35) *Wire, of copper, uncoated. Brass wire.*—A wrought non-tubular brass product which is not flat, not over 0.375 inch in maximum cross-sectional dimension, and is in coils, is classifiable under the provision for wire, of copper, * * * not metal coated or plated, in *item 612.72*, TSUS. Headquarters letter dated May 2, 1973. (423.2)

(T.D. 74–13)

Cotton and manmade fiber textiles—Restriction on entry

Restriction on entry of cotton and manmade fiber textile products in certain categories manufactured or produced in Macau

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 2, 1974.

There are published below directives of December 13, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton and manmade fiber textile

products in certain categories manufactured or produced in Macau. These directives amend but do not cancel that Committee's directives of January 5, 1973 (T.D. 73-44).

These directives were published in the Federal Register on December 19, 1973 (38 FR 34831), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 13, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On January 5, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning January 1, 1973 of wool and man-made fiber textile products in certain specified categories, produced or manufactured in Macau, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustments.[1] The directive of January 5, 1973 was amended on July 19, 1973.

Pursuant to paragraphs 3 and 6 of the Bilateral Wool and Man-Made Fiber Textile Agreement of December 22, 1972, as amended, between the Governments of the United States and Portugal, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend further, effective as soon as possible, the levels of restraint established in the aforesaid directive of January 5, 1973, as amended, for man-made fiber textile products exported from Macau in Categories 219, 221, and 224 to the following:

[1] The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of December 22, 1972, as amended, between the Governments of the United States and Portugal which provide, in part, for an additional three million square yards, equivalent of man-made fiber textile products which may be exported from Macau in the first agreement year, or divided between the first and second agreement years; for the limited carryover of shortfalls in certain categories to the next agreement year; that within the aggregate limit, limits on certain categories may be exceeded by not more than five percent; and for administrative arrangements.

528-684—74——3

Category	*Amended Twelve-Month Levels of Restraint* [2]
219	379,107 dozens
221	69,837 dozens
224	274,571 pounds

The actions taken with respect to the Government of Portugal and with respect to imports of wool and man-made fiber textile products from Macau have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and
Acting Deputy Assistant Secretary for Resources and Trade Assistance

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THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 13, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On January 5, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning January 1, 1973 of cotton textile products in certain specified categories, produced or manufactured in Macau, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1] The directive of January 5, 1973 was amended on July 19, 1973.

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[2] These levels have not been adjusted to reflect any entries made on or after January 1, 1973.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of December 22, 1972, as amended, between the Governments of the United States and Portugal which provide, in part, that within the aggregate limit, limits, on certain categories of cotton textile products exported from Macau may be exceeded by not more than five percent; for the limited carryover of shortfalls to the next agreement year; and for administrative arrangements.

Pursuant to paragraph 4 of the Bilateral Cotton Textile Agreement of December 22, 1972, as amended, between the Governments of the United States and Portugal, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the levels of restraint established in the aforesaid directive of January 5, 1973, as amended, for cotton textile products exported from Macau to the United States in Categories 49 and 50/51 to the following:

Category	*Amended Twelve-Month Levels of Restraint* [2]
49	29,077 dozens
50/51	56,049 dozens

The actions taken with respect to the Government of Portugal and with respect to imports of cotton textile products from Macau have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and
Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74-14)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textile products in category 47 manufactured or produced in Romania

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 2, 1974.

There is published below the directive of December 13, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction

[2] These levels have not been adjusted to reflect any entries made on or after January 1, 1973.

on entry into the United States of cotton textile products in category 47 manufactured or produced in Romania. This directive amends but does not cancel that Committee's directive of December 21, 1972 (T.D. 73-37).

This directive was published in the Federal Register on December 19, 1973 (38 FR 34831), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 13, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On December 21, 1972 the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning January 1, 1973 of certain cotton textiles and cotton textile products in certain specified categories, produced or manufactured in Romania, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1] The directive of December 21, 1972 was previously adjusted by directives of May 21, 1973 and November 5, 1973.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraph 7 of the Bilateral Cotton Textile Agreement of December 31, 1970 between the Governments of the United States and Romania, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed, effective as soon as possible, to increase the level of restraint established for Category 47 in the directive of December 21, 1972, as amended, for the twelve-month period which began on January 1, 1973, to 48,776 dozens.[2]

The actions taken with respect to the Government of Romania and

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of December 31, 1970 between the Governments of the United States and Romania which provide in part that within the aggregate limit, limits on certain categories may be exceeded by not more than five percent; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

[2] These levels have not been adjusted to reflect any entries made on or after January 1, 1973.

with respect to imports of cotton textiles and cotton textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and
Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74-15)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 27, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 73-294 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling:	
December 17, 1973	$0.0512
December 18, 1973	.0510
December 19, 1973	.0511
December 20, 1973	.0509
December 21, 1973	.0509
Belgium franc:	
December 17, 1973	$0.024850
December 18, 1973	.024815
December 19, 1973	.024765
December 20, 1973	.024700
December 21, 1973	.024590

Denmark krone:

December 17, 1973	$0.1612
December 18, 1973	.1612
December 19, 1973	.1615
December 20, 1973	.1614
December 21, 1973	.1610

France franc:

December 17, 1973	$0.2184
December 18, 1973	.2162
December 19, 1973	.2169
December 20, 1973	.2162
December 21, 1973	.2158

Germany deutsche mark:

December 17, 1973	$0.3768
December 18, 1973	.3760
December 19, 1973	.3759
December 20, 1973	.3751
December 21, 1973	.3744

India rupee:

December 17, 1973	$0.1220
December 18, 1973	.1220

Italy lira:

December 17, 1973	$0.001649
December 18, 1973	.001647
December 19, 1973	.001652
December 20, 1973	.001650
December 21, 1973	.001653

Japan yen:

December 17, 1973	$0.003570
December 18, 1973	.003570
December 19, 1973	.003570
December 20, 1973	.003570
December 21, 1973	.003570

Netherlands guilder:

December 17, 1973	$0.3566
December 18, 1973	.3563
December 19, 1973	.3577
December 20, 1973	.3574
December 21, 1973	.3561

Portugal escudo:	
December 17, 1973	$0.0395
December 18, 1973	.0393
December 19, 1973	.0394
December 20, 1973	.0393
December 21, 1973	.0393
Sweden krona:	
December 17, 1973	$0.2188
December 18, 1973	.2187
December 19, 1973	.2181
December 20, 1973	.2187
December 21, 1973	.2196
Switzerland franc:	
December 17, 1973	$0.3126
December 18, 1973	.3127
December 19, 1973	.3126
December 20, 1973	.3133

(LIQ-3-O:A:E)

R. N. MARRA,
Director, Appraisement and Collections Division.

[Published in the Federal Register January 9, 1974 (39 FR 1470)]

(T.D. 74-16)

Reprimand of Customhouse Brokers B. R. Anderson & Company and Robert O. Wesseler, Seattle, Washington

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 3, 1974.

Notice is hereby given that in a decision dated December 6, 1973, the Acting Assistant Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended, severely reprimanded Customhouse Brokers B. R. Anderson & Company and Robert O. Wesseler for their continued failure to comply with the requirements of the regulations governing the conduct of a customhouse broker.

(BRO-3-04)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register January 11, 1974 (39 FR 1645)]

(T.D. 74-17)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 3, 1974.

The appended table shows the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), which are applicable to the currencies of the countries listed in Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C), for the period December 24 through December 28, 1973. This table is published for the information and use of Customs officers and others concerned, and denotes those currencies which vary by 5 percentum or more from the quarterly rate published in T.D. 73-294.

(LIQ-3-0:A:E)

R. N. MARRA,
Director, Appraisement and Collections Division.

[Published in the Federal Register January 14, 1974 (39 FR 1783)]

Country	Currency	Dec. 24	Dec. 25	Dec. 26	Dec. 27	Dec. 28
Australia	Dollar	Q	H	Q	Q	Q
Austria	Schilling	*	H	*	$0.0505	$0.0503
Belgium	Franc	$0.024570	H	$0.024275	$0.024250	.024240
Canada	Dollar	Q	H	Q	Q	Q
Ceylon	Rupee	Q	H	Q	Q	Q
Denmark	Krone	.1613	H	.1605	.1594	.1592
Finland	Markka	Q	H	Q	Q	Q
France	Franc	.2160	H	.2123	.2129	.2126
Germany	Deutsche mark	.3740	H	.3735	.3709	.3701
India	Rupee	Q	H	Q	.1225	.1225
Ireland	Pound	Q	H	Q	Q	Q
Italy	Lira	.001650	H	.001652	.001647	.001642
Japan	Yen	.003567	H	.003568	.003563	.003566
Malaysia	Dollar	Q	H	Q	Q	.4095
Mexico	Peso	Q	H	Q	Q	Q
Netherlands	Guilder	.3550	H	.3550	.3541	.3541
New Zealand	Dollar	Q	H	Q	Q	Q
Norway	Krone	Q	H	Q	Q	Q
Portugal	Escudo	*	H	*	.0389	.0388
Republic of S. Africa	Rand	Q	H	Q	Q	Q
Spain	Peseta	*	H	Q	Q	Q
Sweden	Krona	.2198	H	.2185	.2186	.2185
Switzerland	Franc	.3140	H	.3135	.3095	.3079
United Kingdom	Pound	Q	H	Q	Q	Q

H Holiday.
* Rate certified as "not available." Use last preceding rate shown.
Q Use quarterly rate published in T.D. 73-294.

(T.D. 74-18)

Ports of entry—Customs Regulations amended

Changes in the Customs Field Organization, section 1.2(c), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C., January 2, 1974.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 1—GENERAL PROVISIONS

On December 13, 1973, a notice of a proposal to establish a Customs port of entry at Fresno, California, in the San Francisco, California, Customs district (Region VIII), was published in the Federal Register (38 FR 34328). No comments were received regarding this proposal.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), Fresno, California, is hereby designated a Customs port of entry in the San Francisco, California, Customs district (Region VIII), effective on January 1, 1974.

The geographical limits of the port will include all of the territory within the following boundaries:

> Beginning at the junction of highway #145 and Manning Avenue, north on highway #145 to the San Joaquin River, east along the south bank of the San Joaquin River to highway #41, south on highway #41 to Herndon Avenue, east on Herndon Avenue to McCall Avenue, south on McCall Avenue to Manning Avenue, west on Manning Avenue to the junction of Manning Avenue and highway #145.

To reflect this change, the table in section 1.2(c) of the Customs Regulations is amended by inserting "Fresno, California (including the territory described in T.D. 74-18)" between "Eureka, Calif." and "Reno, Nev. (including the territory described in T.D. 73-56)." in the column headed "Ports of entry" in the San Francisco, California, Customs district (Region VIII).

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 19 U.S.C. 1, 2)

It is desirable to make the Customs port of entry available to the

public as soon as possible. Therefore, good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

(ADM-9-30)

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register January 8, 1974 (39 FR 1355)]

(T.D. 74-19)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 2, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:	*Official*	*Free*
December 3, 1973	$0.1965	Unavailable
December 4, 1973	.1970	"
December 5, 1973	.1975	"
December 6, 1973	.1970	"
December 7, 1973	.1970	"

Iran rial:

For the period December 17 through December 21, 1973, rate of $0.0140.

Philippine peso:

For the period December 17 through December 21, 1973, rate of $0.1450.

Singapore dollar:

December 17, 1973	$0.4075
December 18, 1973	.4090
December 19, 1973	.4105
December 20, 1973	.4110
December 21, 1973	.4105

Thailand baht (tical):

For the period December 17 through December 21, 1973, rate of $0.0475.

(LIQ-3-O:A:E)

R. N. MARRA,
Director, Appraisement and Collections Division.

(T.D. 74-20)

Customs laboratories—Customs Regulations amended

Section 1.6, Customs Regulations, amended to reflect changes of addresses of Customs laboratories

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 1—GENERAL PROVISIONS

Section 1.6 of the Customs Regulations lists the addresses and Customs regions of the several Customs laboratories. One Customs laboratory has been moved and several new ones have been established. In order to reflect these changes, it is necessary to amend the Customs Regulations.

Accordingly, section 1.6, Customs Regulations, is amended as follows:

§ 1.6 Customs laboratories.

The addresses of the several Customs laboratories and the Customs regions served thereby are as follows:

Address	Region
408 Atlantic Avenue, Boston, Massachusetts 02210	I
201 Varick Street, New York, New York 10014	II
103 South Gay Street, Baltimore, Maryland 21202	III
P.O. Box 2112, U.S. Customhouse, San Juan, Puerto Rico 00903	IV
Customhouse, 1-3 E. Bay Street, Savannah, Georgia 31401	IV
423 Canal Street, New Orleans, Louisiana 70130	V and VI
301 Broadway, San Antonio, Texas 78205	VI
861 6th Avenue, San Diego, California 92101	VII
300 South Ferry Street, San Pedro, California 90731	VII
630 Sansome Street, San Francisco, California 94111	VIII
610 S. Canal Street, Chicago, Illinois 60607	IX

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624)

Because this amendment merely updates addresses, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment shall be effective upon publication in the Federal Register.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved January 3, 1974:

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register January 15, 1974 (39 FR 1834)]

(T.D. 74-21)

Personal declarations and exemptions—Customs Regulations amended

Amendment to the list of public international organizations entitled to free entry privileges, section 148.87(b), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

By Executive Order No. 11718 signed May 14, 1973 (38 FR 12797), the President designated the International Telecommunications Satellite Organization (INTELSAT) as an international organization entitled to enjoy certain privileges, exemptions, and immunities conferred by the International Organizations Immunities Act of December 29, 1945 (59 Stat. 669). At the same time, the President revoked this status for the Interim Communications Satellite Committee and the International Telecommunications Satellite Consortium.

Executive Order 11718 extends the benefits of section 3 of the International Organizations Immunities Act (22 U.S.C. 288b), providing for the duty-free treatment of the baggage and effects of alien officers and employees of international organizations, only to the representatives to the Board of Governors of INTELSAT and their alternates, and only to the extent those benefits were enjoyed by the representatives to the Interim Communications Satellite Committee and their alternates under Executive Order 11227.

528-684—74——5

The names of public international organizations currently entitled to free entry privileges are set forth in section 148.87(b) of the Customs Regulations, together with the number and date of the Executive Order by which they were designated.

Accordingly, section 148.87(b) is amended by the following addition (in proper alphabetical order) and deletions:

Addition:

Organization	Executive Order	Date
International Telecommunications Satellite Organization (INTELSAT)—Limited Privileges Only.	11718	May 14, 1973

Deletions:

Organization	Executive Order	Date
Interim Communications Satellite Committee	11227	June 2, 1965
Internation Telecommunications Satellite Consortium.	11277	April 30, 1966

(R.S. 251, as amended, secs. 498, 624, 46 Stat. 728, as amended, 759, sec. 1, 59 Stat. 669; 19 U.S.C. 66, 1498, 1624, 22 U.S.C. 288)

Inasmuch as these amendments merely correct the listing of organizations entitled by law to claim free entry privileges as public international organizations, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved January 3, 1974:

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register January 15, 1974 (39 FR 1834)]

(T.D. 74-22)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 8, 1974.

The appended table shows the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), which are applicable to the currencies of the countries listed in Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C), for December 31, 1973. This table is published for the information and use of Customs officers and others concerned, and denotes those currencies which vary by 5 per centum or more from the quarterly rate published in T.D. 73-294.

(LIQ-3-0:A:E)

R. N. MARRA,
Director, Appraisement and Collections Division.

[Published in the Federal Register January 15, 1974 (39 FR 1869)]

Country	Currency	Dec. 31
Australia	Dollar	[a]
Austria	Schilling	$0.0503
Belgium	Franc	.024205
Canada	Dollar	[a]
Ceylon	Rupee	[a]
Denmark	Krone	.1589
Finland	Markka	[a]
France	Franc	.2128
Germany	Deutsche mark	.3697
India	Rupee	.1225
Ireland	Pound	[a]
Italy	Lira	.001644
Japan	Yen	.003568
Malaysia	Dollar	.4075
Mexico	Peso	[a]
Netherlands	Guilder	.3538
New Zealand	Dollar	[a]
Norway	Krone	[a]
Portugal	Escudo	.0388
Republic of S. Africa	Rand	[a]
Spain	Peseta	[a]
Sweden	Krona	.2183
Switzerland	Franc	.3076
United Kingdom	Pound	[a]

[a] Use quarterly rate published in T.D. 73-294.

(T.D. 74-23)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 8, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

	Official	*Free*
Hong Kong dollar:		
December 10, 1973	$0.1972	$0.197530*
December 11, 1973	.1972	.197433*
December 12, 1973	.1975	.197433*
December 13, 1973	.1975	.197238*
December 14, 1973	.1975	.197530*

Iran rial:	
December 24, 1973	$0.0140
December 25, 1973	Holiday
December 26, 1973	.0140
December 27, 1973	.0148
December 28, 1973	.0148
Philippine peso:	
December 24, 1973	$0.1450
December 25, 1973	Holiday
December 26, 1973	.1450
December 27, 1973	.1490
December 28, 1973	.1490
Singapore dollar:	
December 24, 1973	$0.4108
December 25, 1973	Holiday
December 26, 1973	.4105
December 27, 1973	.4075
December 28, 1973	.4040

*Certified as nominal.

Thailand baht (tical):

December 24, 1973	$0.0475
December 25, 1973	Holiday
December 26, 1973	.0475
December 27, 1973	.0495
December 28, 1973	.0495

(LIQ-3-O:A:E)

R. N. MARRA,
Director, Appraisement
and Collections Division.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Nils A. Boe

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis
James L. Watson
Herbert N. Maletz
Bernard Newman
Edward D. Re

Senior Judges

Charles D. Lawrence
David J. Wilson
Mary D. Alger
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Protest Decisions

(C.D. 4494)

AMICO, INC. (FORMERLY KNOWN AS: EXHIBIT SALES, INC.) *v.* UNITED STATES

Toys—Clown flashlights

So called "Clown Flashlights" held properly classifiable as toys rather than as flashlights since the evidence showed that they were chiefly used for the amusement of children and were virtually useless for illumination purposes.

Court Nos. 69/20864 and 71-7-00468

Port of Philadelphia

[Judgment for plaintiff.]

(Decided December 26, 1973)

Allerton deC. Tompkins for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Andrew P. Vance* and *John N. Politis*, trial attorneys), for the defendant.

MALETZ, Judge: These consolidated actions involve the proper tariff classification of articles invoiced as "Handy Clown Flashlights" that were imported from Hong Kong and entered at the port of Philadelphia in 1968 and 1970. The articles were classified by the government under item 683.70 of the tariff schedules as flashlights and assessed duty at the rate of 35% ad valorem.

Plaintiff claims that this classification is erroneous and that the articles are properly classifiable under item 737.90 as toys at the rate of 31% for the articles that were entered in 1968 and at the rate of 24% for the articles that were entered in 1970. For the reasons that follow, we sustain plaintiff's claim.

The pertinent provisions of the tariff schedules read as follows:

Classified under:

	Portable electric lamps with self-contained electrical source, and parts thereof:	
683.70	Flashlights and parts thereof-------	35% ad val.

Claimed under:

Schedule 7, Part 5, Subpart E

Subpart E headnotes:

1. The articles described in the provisions of this subpart (except parts) shall be classified in such provisions, whether or not such articles are more specifically provided for elsewhere in the tariff schedules * * *

* * * * * * *

2. For the purposes of the tariff schedules, a "toy" is any article chiefly used for the amusement of children or adults.

* * * * * * *

Toys, and parts of toys, not specially provided for:

* * * * * * *

737.90	Other----------	[1]

[1] 31% ad valorem for merchandise in 1968; 24% for merchandise entered in 1970. See T.D. 68-9.

At the outset, it is fundamental that in a tariff classification controversy, the plaintiff has the twofold burden of proving that the government's classification is erroneous and establishing the correctness of its own affirmative claim. In the present case, however, this twofold burden would be satisfied if plaintiff has proven that the imported merchandise was a "toy" for tariff purposes, inasmuch as headnote 1 (previously quoted) directs that a "toy" be so classified even if it is also encompassed by another provision (e.g., flashlights) which is more specific. See e.g., *United States* v. *Topps Chewing Gum, Inc.*, 58 CCPA 157, 158, C.A.D. 1022 (1971). Against this background, the single question is whether plaintiff has shown by a preponderance of the evidence that the imported articles are toys, i.e., chiefly used for the amusement of children.

Turning to the record, the importation in issue consists of a red flashlight body which is powered by two D type batteries (which are not imported) and activated by a metal on/off switch or a plastic button for flashing. At one end of the flashlight body is a screw-type cap which has a spring on the interior. At the other end is a reflector and bulb, but no lens. Attached to this end is a screw-type collar and a gaudy red and yellow plastic clown head which are molded together into one piece and hold the reflector (into which the bulb is screwed) and batteries in place.[2] The head is made in such a way as to resemble the head of a smiling clown; it contains two round openings depicting the clown's eyes, a round opening for the nose, and a wide opening for the mouth. When the light switch is put on or the plastic button depressed, a diffused light comes through these openings in the clown's face and projects a clown-like image on the surface of a darkened area.

Plaintiff presented three witnesses[3] who cumulatively had seen the article used in many places in the United States. In this connection, they testified—without contradiction—that the articles were used only as playthings for the amusement of children. They pointed out that only when it was dark did the article give any effect by light. In this connection, they stated that older children flashed on the light to shine the clown-like image on a wall, ceiling or other object in a darkened place or flashed the light at each other. Younger children, on the other hand, used the article as a puppet or doll without flashing the light on. According to the witnesses, the features that make the imported article attractive as a toy are its funny clown face and its ability to project

[2] Since the clown head portion holds the reflector and batteries in place, the importation cannot be operated unless the clown head portion is attached.

[3] Two of these three witnesses were employed by the plaintiff-importer; one as import manager and the other as a salesman. The third witness was a psychologist who was also the wife of the vice president of the plaintiff-importer.

the clown's smiling face image on the surface of a darkened area; its bright colors: its ease of operation; and its status as a puppet.

Additionally, plaintiff's witnesses testified—again without contradiction—that the imported article is unsatisfactory as a flashlight [4] and is not used as a light source or for practical illumination purposes.

The record further shows that the import is sold by plaintiff in a polybag with an attached cardboard header which describes the import as "A Wonderful Toy" and states that—

> The bright beam of litht [sic] shines throuth [sic] the clown's eyes and mouth
>
> When flashed on a darkened wall, the reflection looks like a smiling clown's image.

The article retails at a price ranging from 88 cents to $1.00 and is distributed through toy departments (and sometimes notion departments) of department stores; through party-plan sales where hostesses offer selected merchandise at parties in their homes; and by the carnival trade. It is not carried by hardware stores or by the sections of department stores handling flashlights.

Defendant presented one witness, the vice president of a company in New York City which merchandises boys' and girls' accessories. He testified that his company carried an item it called a "Clown Flashlight" which is similar to the imported article and that in his company's 1970 and 1971 catalogues, the item was marketed with flashlights and not as a toy. It is to be added that the item is sold in a box which is labelled "JOKER FLASHLIGHT" and contains the following statement thereon:

> Plastic JOKER head in non-toxic paint
> Light beam shoots through Eyes, Nose & Mouth
> It is a toy-like fun [sic] for children and a practical use for adults.

Coming now to the legal aspects, the principles applicable here as to chief use were set out in *B. Shackman & Company, Inc.* v. *United States*, 67 Cust. Ct. 372, 383, C.D. 4300 (1971), as follows:

> Chief use, * * * is an issue of fact to be established on the basis of positive testimony representative of an adequate geographic cross section of the nation. *L. Tobert & Co., Inc., et al.* v. *United States*, 41 CCPA 161, C.A.D. 544 (1953). However, under certain circumstances chief use can be proven inferentially. See *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 674, C.D. 3847 (1969); *Border Brokerage Company, Inc.* v. *United States*, 65 Cust. Ct. 277, C.D. 4089 (1970) (appeal pending). In fact the

[4] A flashlight is a small battery-operated, portable electric light. See *Webster's New International Dictionary* (1949). See also *Biddle Purchasing Co.* v. *United States*, 48 Cust. Ct. 251, 257, C.D. 2345 (1962), *aff'd*, 50 CCPA 71, C.A.D. 823 (1963). It is also described in the heading preceding item 683.70 (quoted previously) as a portable electric lamp with a self-contained electrical source.

sample itself may be sufficient to overcome the presumption of correctness. *United States* v. *Colibri Lighters (U.S.A.) Inc.*, 47 CCPA 106, C.A.D. 739 (1960). And this is particularly true in toy cases where the sample can permit the drawing of inferences as to use nationally. *Fred Bronner Corp.* v. *United States*, 57 Cust. Ct. 428, C.D. 2832 (1966); *Wilson's Customs Clearance, Inc.* v. *United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). Further, importers, merchants and executives concerned with ordering, selling, distributing and promoting an article have to know the article's chief use and may properly give testimony as to such use. *International Customs Service, Inc., et al.* v. *United States*, 63 Cust. Ct. 255, 259, C.D. 3905 (1969); *Novelty Import Co., Inc.* v. *United States*, 60 Cust. Ct. 574, 582, C.D. 3462, 285 F. Supp. 160 (1968).

To summarize, the uncontradicted testimony—which the court finds credible—proves beyond question that the importations are chiefly used as playthings by children for their amusement and that they are entirely unsuitable for use as a flashlight. Added to this, a demonstration of a lighted sample of the imported article in a darkened courtroom, together with a later examination by the court of the lighted sample in a darkened room, shows conclusively that it provides only the most negligible illumination and is thus virtually useless as a flashlight.

It also bears mention that the imported article was represented to the public by the plaintiff-importer as a toy. Although not determinative, the manner in which a merchant thus represents his goods has obvious probative value. See e.g., *Davis Products, Inc.* v. *United States*, 59 Cust. Ct. 226, 230, C.D. 3127 (1967); *New York Merchandise Co., Inc.* v. *United States*, 62 Cust. Ct. 38, 44, C.D. 3671, 294 F. Supp. 971, 976 (1969).

Defendant argues, however, that category 3 of the *Summaries of Trade and Tariff Information*, Schedule 6, Volume 10, p. 215 (1969) offers support for the government's classification of the importation in issue as a "novelty flashlight." This argument, however, is devoid of merit. In the first place, *Summaries* published "*after* the enactment of the tariff schedules by Congress, * * * cannot be considered indicia of congressional intent. *W. R. Filbin & Co., Inc.* v. *United States*, 63 Cust. Ct. 200, 212, C.D. 3897, 306 F. Supp. 440, 448 (1969). [Emphasis in original.] Second, even assuming that *Summaries* can be used to substantiate what Congress intended in using particular terminology,[5] those in question fail entirely to support defendant's position. The *Summaries* upon which defendant relies lists as its third category

[5] See *Tanross Supply Co., Inc.* v. *United States*, 63 Cust. Ct. 38, 42, C.D. 3870 (1969), *mod., Id.* v. *Id.*, 58 CCPA 26, C.A.D. 1000 (1970).

of flashlights, "(3) pen light and novelty" (*id.*, p. 215), but goes on to state (*id.*, p. 216):

> * * * Pen light types are generally small flashlights—so designated because they are about the size of a fountain pen. Most of the pen light types are suitable for only light service or intermittent use and are frequently sold as novelty items. * * *

From what has been said, it is obvious that the articles above referred to are "flashlights" that are used for illumination purposes and thus in no way encompass the articles here in issue.

In sum, it is held that the imported articles are, as plaintiff contends, properly classifiable as toys under item 737.90 and not as flashlights under item 683.70. Plaintiff's claim is therefore sustained and judgment will be entered to that effect.

(C.D. 4495)

FLORSHEIM SHOE COMPANY, DIVISION OF INTERCO, INC. *v.* UNITED STATES

Water buffalo calfskin leather

COMMERCIAL DESIGNATION

Water buffalo calfskin leather, while coming within the common meaning of the term "calf leather," is excluded from the commercial meaning of that term and, consequently, falls outside the scope of item 121.30—the tariff classification provision for calf upper leather.

SAME

Tariff terms are drafted in the language of trade and commerce which is presumptively the same as that in common use. Where, however, it is affirmatively established—as it has been here—that a tariff term, at the time it was enacted into law, had a meaning in the trade and commerce of the United States which differed from the common meaning and was uniform, definite and general, such commercial meaning will be adopted unless a contrary intention of Congress is clearly manifested.

Court No. 71–8–00938

Port of Chicago

[Judgment for plaintiff.]

(Decided December 26, 1973)

Barnes, Richardson & Colburn (*Joseph Schwartz* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Martin L. Rothstein* and *Frank J. Desiderio*, trial attorneys), for the defendant.

MALETZ, Judge: The question in this case concerns the proper tariff classification of leather made of India water buffalo calfskin. The leather—which was exported from Italy and entered at the port of Chicago in 1970—was classified by the government under item 121.30 of the tariff schedules as calf upper leather and assessed duty at the rate of 10% ad valorem.

Plaintiff contends that this classification is erroneous and claims that the importation is properly classifiable under item 121.57 as "not fancy" other leather, dutiable at the rate of 7%.

The pertinent provisions of the tariff schedules read as follows:

	Leather in the rough, partly finished, or finished:		
	* * * * * * *		
	Other:		
	Calf and kip:		
121.30	Upper	10% ad	val.
	* * * * * * *		
	Other:		
	Not fancy:		
	* * * * * * *		
121.57	Other	7% ad	val.[1]

The parties agree that water buffalo calfskin leather comes within the common meaning of the term "calf leather." In this circumstance, the sole issue is whether such buffalo calfskin leather is excluded, as plaintiff contends, from the commercial meaning of the term "calf leather" and, consequently, falls outside the scope of item 121.30—the tariff classification provision for calf upper leather. For the reasons that follow, the court sustains plaintiff's claim.

In support of its position, plaintiff called a zoologist and seven trade witnesses and introduced nine exhibits. Defendant, on the other hand, did not present any witnesses, but introduced one exhibit.

Dr. William Peter Crowcroft, the zoologist called by plaintiff, testified that the India water buffalo belongs to the genus "Bubalus" and the species "bubalis"; that domesticated cows or cattle belong to the genus "Bos" and the species "taurus"; and that Brahman cattle belong to the genus "Bos" and the species "indicus."[2] There are numerous differences, he indicated, between the India water buffalo and domestic

[1] The record shows that the imported merchandise is not "fancy" leather, and it is undisputed that it is not chamois, patent, upholstery, kip, pig, hog, goat or sheep leather, which classifications must be found inapplicable before reaching the question as to whether or not the imported merchandise may be classified under item 121.57 as "other" leather.

[2] According to Crowcroft, all animals of one kind that live and breed together, belong to a "species." He further stated that different species which are very much alike and have had common ancestry in the past are grouped together in a "genus."

cattle of the genus Bos, the most fundamental one being that they do not breed together.

Turning next to the seven trade witnesses called by plaintiff, five such witnesses were associated with tanneries. These were (1) Milton Frauendorfer, vice president of a tannery in Milwaukee, Wisconsin, which deals in cow calfskins and sells primarily to shoe manufacturers and also to manufacturers of "novelty" items, including belts, handbags, key cases and billfolds; (2) Roderick Wessel Correll, president of a tannery in Gloversville, New York, which manufactures and wholesales various types of finished leather, including buffalo calfskins.[3] and also sells raw skins; (3) Marte Loewengart, president of a tannery with subsidiaries in New York and Argentina, which manufactures and sells leather, including buffalo calf and cow calf leather, to manufacturers of shoes, wallets, belts, handbags and radio and camera cases; (4) Philip G. Bernheim, vice president of a company located in Hoboken, New Jersey, which manufactures and sells to various manufacturers leather from animal skins and hides, including cow calfskins and buffalo calfskins; and (5) Hunter L. Barrett, president of a New Jersey company which tans calfskins of young cows and also, since 1963, buffalo calfskins, and sells mostly to shoe manufacturers.

Plaintiff's sixth trade witness was Samuel Gittler, vice president and partner in a New York City firm which is the "largest importer of leather into the United States," including cow calf and buffalo calf leather. The firm sells its imported leather primarily to manufacturers and also to wallet and handbag manufacturers.

The seventh trade witness called by plaintiff was Morris B. Madian, vice president of plaintiff-Florsheim, a shoe manufacturer, in which capacity he is in charge of purchasing "upper and lining leather," including cow and buffalo calfskin leather.

All of the trade witnesses, except Madian, have had extensive sales experience in the leather wholesale trade and their companies sell to customers throughout the United States. Madian, on the other hand, has purchased leather for Florsheim from over 200 tanneries located throughout the country.

All the trade witnesses were in agreement that the term "calf leather," or what the witness Loewengart referred to as "genuine calf," had a definite meaning in the wholesale trade in which they dealt in the United States prior to and on August 31, 1963, when the tariff schedules went into effect; that this meaning was uniform and general throughout that area of commerce; that the term referred to the leather of the domesticated calf within the genus Bos; that it uni-

[3] The term "buffalo" as used here and hereafter refers to the India water buffalo.

formly excluded water buffalo calfskin leather; that an order for calf leather would not be filled by a delivery of water buffalo calfskin leather; and that buffalo calf leather did not move in the channels of trade under the designation, calf leather.

It is to be added, however, that there was some difference of opinion among the witnesses as to whether the leather produced from young Brahman cattle (Bos indicus) would be commercially recognized as "calf leather." Also, while agreeing that kip referred to the skin of an older calf, and differed from calfskin only in size, the witnesses were not in agreement as to what stage—whether measured in terms of square feet or weight—calf became kip for trade purposes.

On a further aspect, it is to be observed that various exhibits in the record denote a distinction between cow calfskin and buffalo calfskin. Thus, the index to leathers contained in the 1958 and 1963 editions of the *Leather and Shoes Blue Book*—which was characterized by the witness Madian as the "bible" of the shoe industry—lists buffalo leather separately from calf leather; a sheet from the *Weekly Bulletin Leather and Shoe News*, dated August 25, 1956, contains an advertisement by the witness Bernheim's company listing the various types of leather it sold, including "calf," "kip" and "buffalo," among others; the *International Dictionary of the Leather and Allied Trades*, 1951, contains separate listings for "buffalo" and "calf"; and *The Chemistry and Technology of Leather*, 1962, has separate chapters on "The Manufacture of Leather from Calfskin" and on "Novelty Leathers," the latter including buffalo.[4]

Additionally, examination of a representative sample of the imported water buffalo calfskin leather, and a sample of cow calfskin leather, reveals that the buffalo calf leather is heavier, thicker and less supple than the cow calfskin leather and has a deeply textured or grained surface which is coarse to the touch, whereas cow calfskin leather has a very smooth, soft surface with light indistinct markings.

Against this background, defendant contends that plaintiff has failed to sustain its burden of proving the claimed commercial designation for calf leather, asserting that it has not established a commercial meaning for the term which is "definite, uniform and general." In effect, the thrust of its attack is that the testimony of the trade witnesses, whose qualifications, experience and credibility were unchallenged, is not in absolute harmony on all matters.

As to this, we start with the basic rule that tariff terms are drafted in the language of trade and commerce which is presumptively the

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[4] The Florsheim shoe catalogue for Spring 1972, which is distributed solely for dealer use, describes all shoes made of buffalo calfskin leather as "Calais calf," whereas shoes made from cow calfskin leather are described under other names, such as "Cashmere," "Dolce" or "Nairobi" calf.

same as that in common use. E.g., *Swan* v. *Arthur*, 103 U.S. 597 (1880); *C. J. Tower & Sons* v. *United States*, 41 CCPA 195, C.A.D. 550 (1954); *United States* v. *M. J. Brandenstein & Co.*, 17 CCPA 480, T.D. 43941 (1930); *Meyer & Lange* v. *United States*, 6 Ct. Cust. Appls. 181, T.D. 35436 (1915). Where, however, it is affirmatively established that a tariff term, at the time it was enacted into law, had a meaning in the trade and commerce of the United States which differed from the common meaning and was uniform, definite and general, such meaning will be adopted, unless a contrary intention of Congress is clearly manifested. *Cadwalader* v. *Zeh*, 151 U.S. 171 (1894); *United States* v. *Georgia Pulp and Paper Manufacturing Co.*, 3 Ct. Cust. Appls. 410, T.D. 32998 (1912); *United States* v. *Wilfred Schade & Co.*, 16 Ct. Cust. Appls. 366, T.D. 43092 (1928); *Nylos Trading Company* v. *United States*, 37 CCPA 71, C.A.D. 422 (1949).

Proof of commercial designation is a question of fact to be established in each case. *Daniel Green Shoe Co.* v. *United States*, 58 Cust. Ct. 7, C.D. 2868, 262 F. Supp. 375 (1967). It is generally recognized that the principal source of evidence that the commercial meaning contended for is general, definite and uniform throughout the wholesale trade at or prior to enactment of the involved statute should come from those persons who actually deal in or are conversant with the wholesale trade in which the merchandise travels and the designation it receives therein. *The Hy-Glow Company* v. *United States*, 58 Cust. Ct. 481, C.D. 3023 (1967). See also *Rice Millers' Association* v. *United States*, 15 Ct. Cust. Appls. 355, T.D. 42560 (1928); *Daniel Green Shoe Co.* v. *United States*, *supra*, 58 Cust. Ct. 7.

As the court stated in *Heads and Threads* v. *United States*, 60 Cust. Ct. 308, 313, C.D. 3374, 282 F. Supp. 484, 489 (1968):

> * * * This rule of commercial designation "was intended to apply to cases where the trade designation is so universal and well understood that the Congress, and all the trade, are supposed to have been fully acquainted with the practice at the time the law was enacted." *Jas. Akeroyd & Co.* v. *United States*, *supra*, 15 Ct. Cust. Appls. at 443. See also e.g., *United States* v. *Fung Chong Co.*, 34 CCPA 40, 42, C.A.D. 342 (1946). * * *

The plain import of *Akeroyd* and *Heads and Threads* is that a finding of commercial designation requires that the testimony of witnesses in the trade or industry show, without substantial conflict, that at the time of enactment there was a definite, uniform and general meaning in the trade and commerce of the United States for the tariff term in issue which differs from its common meaning, and which either embraces or, as in this case, excludes the imported merchandise.

The background and experience of plaintiff's witnesses in the calfskin leather industry are broad and impressive: all were in business

long prior to the enactment of the tariff schedules and were in a position to know whether calf leather had a specialized meaning in the trade, a point on which all agreed, and on which they were fully supported by the documentary evidence.

All the trade witnesses were in accord that at or prior to August 31, 1963, the term "calf leather" referred in the wholesale trade to the leather of young domesticated cows or cattle within the genus Bos; that it excluded buffalo calf leather; and that a delivery of the latter would be unacceptable to fill an order for calf leather.[5] Defendant failed to refute or rebut their testimony on any of these points.

Furthermore, while physical appearance and characteristics are not always of signifiance when claiming a commercial meaning for a tariff term which excludes the imported merchandise, it is worthy of observation that the differences in appearance, texture and feel between buffalo calf leather and cow calf leather, as described above, are readily apparent even to the layman.

The court is satisfied that the evidence establishes that the buffalo calf leather in issue does not move in commerce as "calf leather" or "calf upper leather" and is excluded from the commercial meaning of these terms.

The fact that the witnesses did not agree as to the exact size or weight at which calf becomes known in the trade as "kip" is immaterial since item 121.30, under which the merchandise was classified, provides for both calf and kip. See *C. J. Tower & Sons* v. *United States*, 45 CCPA 43, C.A.D. 670 (1957). By the same token, we do not think it crucial to plaintiff's case that the witnesses did not agree as to whether calf leather included leather from all species of the genus Bos, inasmuch as all agreed that the term "calf leather" was limited to leather from the calf of the genus Bos and did not include leather from the buffalo calf which (as noted previously) is within the genus Bubalus. See e.g., *C. J. Tower & Sons* v. *United States*, *supra; United States* v. *C. J. Tower & Sons*, 40 CCPA 14, C.A.D. 491 (1952); *Michigan Bulb Company* v. *United States*, 31 Cust. Ct. 64, C.D. 1546 (1953). Particularly relevant in this connection is *United States* v. *Georgia Pulp and Paper Manufacturing Co.*, *supra*, 3 Ct. Cust. Appls. 410, in which the court held that the term "machine tools' was confined to metal-working machines and did not include woodworking machines. In reaching this result, the court noted that the trade witnesses—

> * * * did not agree in several instances as to whether a given machine for the working of metal would or would not be a machine tool within the trade understanding, but they were at no disagree-

[5] In accordance with an order of the court granting defendant's motion pursuant to rule 10.4(d) for exclusion of proposed witnesses, when each trade witness testified, the others (except Madian who acted as advisor to plaintiff's counsel) were excluded from the courtroom.

> ment that a machine tool was in the trade understood to be one that worked metal in some manner and was limited thereto. [3 Ct. Appls. at 413.]

To like effect, the rule of commercial designation may properly be invoked in the present case to exclude buffalo calf leather from classification as "calf leather." For the witnesses were in unanimous agreement that "calf leather" referred to the leather of young cows within the genus Bos, and excluded buffalo calf leather within the genus Bubalus, although they were not in complete accord as to when "calf" becomes "kip" and as to whether every single species of the genus Bos may be "calf leather."

Misplaced is defendant's reliance on *United States* v. *Fung Chong Co.*, *supra*, 34 CCPA 40. In that case, the government sought to establish that kumquats, though within the common meaning of the term "oranges," were excluded from the commercial meaning of that term. The record showed, however, that the term "orange" was not used by the trade and that there were so many varieties of oranges that the trade had to specify the type of orange. Further, although certain witnesses for the government testified that the term "orange" had a commercial meaning different from its common meaning, they did not inform the court as to such commercial meaning; the most that those witnesses testified to was that the term "kumquat" was excluded from the commercial meaning of the term "orange." In these circumstances, the court held that "[i]n the absence of any testimony as to the commercial meaning of the term 'orange,' the statement of the witnesses that the involved merchandise was excluded from that term is insufficient to prove commercial designation." 34 CCPA at 44. By contrast, in the present case, seven witnesses testified without contradiction that the term "calf leather" was used by the trade and that in the trade, the term covered leather from the calf of the genus Bos and did not include buffalo calf leather.

Additionally, there was evidence in *Fung Chong* that "commercially as well as commonly a kumquat falls within the general classification of 'orange'." 34 CCPA at 44. Here, on the other hand, the evidence is undisputed that while buffalo calfskin comes within the common meaning of the term "calf leather," commercially it is excluded from the meaning of that term.

Defendant further relies upon *Heads and Threads* v. *United States*, *supra*, 60 Cust. Ct. 308. That case is also distinguishable. There the government was seeking to establish a commercial meaning of the term "bolts," and that it excluded cap screws, but failed to show by satisfactory evidence what that meaning was. Beyond that, some of the government witnesses testified that they would ship cap screws to fill an order for bolts with a washer face. In addition, the *importer* pre-

sented proof to show that cap screws were in fact included within the commercial meaning of bolts. Obviously, we have no such situation here, since the plaintiff has established a commercial meaning which excludes buffalo calf leather from the term "calf leather" and has proven that an order for calf leather would not be filled by a delivery of buffalo calfskin leather.

Defendant also cites *Jas. Akeroyd & Co.* v. *United States*, *supra*, 15 Ct. Cust. Appls. 440, which simply reiterates that the rule of commercial designation does not apply except where the trade practice or nomenclature is universal in the trade, and not confined to some portion of the trade. In the present case, plaintiff has shown that buffalo calf leather is universally excluded from the commercial meaning of the term "calf leather."

Finally, *Daniel Green Shoe Co.* v. *United States*, *supra*, 58 Cust. Ct. 7, upon which defendant also relies, is likewise not in point because there was a wide degree of conflict in the testimony of the witnesses as to the commercial meaning of the tariff term in dispute. Here, there is no conflict whatever in the testimony of the trade witnesses that the commercial meaning of calf leather excludes buffalo calf leather.

In summary, on the basis of the record, it is held that the imported merchandise is not "calf upper leather" within the meaning of item 121.30, but is properly dutiable as "not fancy" other leather under item 121.57. Plaintiff's claim is therefore sustained and judgment will be entered accordingly.

(C.D. 4496)

GERRY SCHMITT & COMPANY *v.* UNITED STATES

Steel blades

ADMINISTRATION

Where an appropriate customs official erroneously classified merchandise under a particular item number of the Tariff Schedules of the United States, his error is one of judgment as to the proper applicable law, and the remedy available to the importer is a protest filed against the liquidation within 60 days under 19 U.S.C.A., section 1514. *Fibrous Glass Products, Inc.* v. *United States*, 63 Cust. Ct. 62, C.D. 3874 (1969).

Court No. 69/34375

Port of Detroit

[Judgment for defendant.]

(Decided December 27, 1973)

John C. Ray for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*John A. Gussow*, trial attorney), for the defendant.

WATSON, Judge: This case involves "grader blade" steel shapes, imported from Lake Ontario Steel Company, Whitby, Ontario, Canada. The subject merchandise was classified and assessed under item 608.46 of the Tariff Schedules of the United States (TSUS) at 9.5 per centum ad valorem [1] and under item 664.05 of the said tariff schedules at 9 per centum ad valorem.[2] Plaintiff claims the importations are properly classifiable and dutiable at the rate of 0.1 cent per pound under item 609.80, TSUS.[3]

The importer of record, a licensed customs broker, is contesting through the subject protest the denial of its requests for reliquidations of some fifty-nine entries, eight of which were abandoned at the trial (Nos. 31256, 31257, 32105, 32106, 32107, 32108, 33906, and 41786, liquidated from December 1967 through February 1968). These entries were made at the port of Detroit, Michigan. The fifty-one remaining entries were liquidated on various dates, commencing on June 24, 1968. At this time, it is undisputed that a timely protest against the above liquidations was never filed. However, after a

[1] Item 608.46 reads as follows:

Bars of steel:	
* * * * * * *	
Other bars:	
Other than alloy steel:	
Not cold formed:	
Not coated or plated with metal:	
* * * * * * *	
Valued over 5 cents per pound	9.5% ad val.

[2] Item 664.05 reads as follows:

Mechanical shovels, coal-cutters, excavators, scrapers, bulldozers, and other excavating, levelling, boring and extracting machinery, all the foregoing, whether stationary or mobile, for earth, minerals, or ores; pile drivers; snow plows, not self-propelled; all the foregoing and parts thereof	9% ad val.

[3] Item 609.80 reads as follows:

Angles, shapes, and sections, all the foregoing, of iron or steel, hot rolled, forged, extruded, or drawn, or cold formed or cold finished, whether or not drilled, punched, or otherwise advanced; sheet piling of iron or steel:	
Angles, shapes, and sections:	
Hot rolled; or, cold formed and weighing over 0.29 pound per linear foot:	
Not drilled, not punched, and not otherwise advanced:	
Other than alloy iron and steel	0.1¢ per lb.

number of entries had been liquidated, plaintiff, on April 2, 1968, wrote to the Bureau of Customs in Washington, D.C., requesting a ruling on the classifications, claiming that the correct classification should be as claimed above.

On March 29, 1969, plaintiff received from Salvatore Caramagno, Acting Director, Division of Tariff Classification Rulings, a ruling dated March 28, 1969 (some 9 months after liquidation of the involved entries commenced) wherein he substantiated plaintiff's contention pertaining to the proper classification of the importations. Upon receipt of the aforementioned ruling, plaintiff discovered all the entries had been liquidated contrary to this new promulgation.

Time for protesting the liquidations having elapsed, plaintiff resorts to section 520(c)(1), Tariff Act of 1930, as amended,[4] in an attempt to salvage the entries covered by the involved protest. This request for relief under section 520(c)(1) was denied by the district director of customs on May 28, 1969 for the reason that the subject of the request involved an "error in the construction of law." It is from this denial of plaintiff's requests for reliquidations that the subject protest was filed on July 25, 1969. Plaintiff claims that the failure to withhold or defer appraisements and/or liquidations during the pendency of an administrative request to the Bureau of Customs in Washington, D.C., is in derogation of its rights under 92 Treas. Dec. 147, T.D. 54387(3) (1957),[5] expressing the policy of the Bureau of Customs with respect to the suspensions of liquidations.

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[4] Section 520(c)(1) reads in pertinent part as follows:

(c) Notwithstanding a valid protest was not filed, the Secretary of the Treasury may authorize a collector to reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, appraisement, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, appraisement, or transaction, or within sixty days after liquidation or exaction when the liquidation or exaction is made more than ten months after the date of the entry, appraisement, or transaction; * * *.

[5] T.D. 54387(3) reads as follows:

APPRAISEMENT; LIQUIDATION

(3) *Deferment of appraisement or liquidation; T.D. 53902(2) superseded.*—It is the policy of the Bureau of Customs that appraisers shall withhold appraisement or collectors suspend liquidation of entries (1) to the extent and under the conditions specified in the Customs Regulations and the Customs Manual, (2) as directed by the Bureau in circulars and (3) during the pendency before the Bureau or the Treasury Department of questions valuation or classification submitted at the request of the importer for an administrative review of the official action contemplated. No additional deposit of duty shall be required in connection with withheld appraisements or suspended liquidations unless in special situations the Bureau should so direct. Appraisers shall not withhold appraisement of merchandise or collectors the liquidation of entries simply because the issues involved may be before the court in pending reappraisement or classification litigation since section 501 and 514, Tariff Act of 1930, as amended, provide the importer an appropriate remedy. The Bureau's previous statement of policy in T.D. 53902(2) is superseded hereby. Bureau letter to the Appraiser of Merchandise, New Orleans, Lousiana, dated May 13, 1957. (332.1)

It is defendant's position that no requests for suspensions of the liquidations of these importations were ever made. Defendant additionally argues that even were such requests made, the district director's failure to comply with them would have been an exercise of his discretion and a decision of a legal nature which could be challenged only by a protest filed within 60 days of the liquidations in question.

After studying the record and the law, I find myself in full agreement with defendant on all points. I am not persuaded that requests for suspensions of liquidations were ever made on behalf of the importer. Furthermore, even were such requests made, I am of the opinion it was within the discretion of the district director to suspend these liquidations. If he failed to do so, the plaintiff's only remedy was a challenge to the unwanted liquidations by means of a timely protest. Having allowed the liquidations to pass unchallenged they became final. The later ruling favorable to plaintiff operates only prospectively and, while it is undoubtedly a source of regret to plaintiff that it did not somehow preserve its right to challenge the earlier liquidations, it cannot revive its right by utilizing an administrative method designed to rectify mistakes other than those which are decisional in nature.

Regarding the question of whether suspensions of liquidations were ever requested of the import specialist, Mr. Petton, by Mrs. Schmitt, the customs broker and importer of record, I incline to the view that no such requests were made. There is conflicting testimony on this point. For example, Mrs. Schmitt recalls sending Mr. Petton a copy of her letter to the Director of Tariff Classification Rulings requesting a ruling on these importations. Mr. Petton denied receiving a copy. Mrs. Schmitt recalled making oral requests to Mr. Petton that liquidations of the subject merchandise be withheld. Mr. Petton denied receiving such requests. I discern a lack of definiteness and precision in Mrs. Schmitt's testimony which detracts from its persuasiveness. The lack of support for her assertions from a witness who was her assistant during the period involved further weakens plaintiff's proof on this point. In short, plaintiff has failed to prove requests were made to suspend the liquidations of the entries involved herein.

As noted earlier, even had requests for suspensions been made and rejected by the district director, the last possible appropriate challenge by plaintiff would have been to protest the unwanted liquidations within 60 days. A request by an importer for suspension of liquidations does not automatically activate such suspension. T.D. 54387(3), insofar as it is relevant to this case, indicates that only when the appropriate customs official submits a question of valuation or classification to the Bureau of Customs or Treasury Department are liquidations to be suspended. Thus, even when the aforementioned procedure is

considered, the suspension of the liquidation is still dependent on a decision by the appropriate customs official, not merely on the request by the importer. I do not read T.D. 54387(3) as granting the importer a right to challenge a refusal to suspend liquidations apart from the right to challenge the undesired liquidations by timely protest. It merely establishes an administrative procedure for the guidance of the appropriate customs official and is an expression of policy regarding the withholding of appraisements or liquidations. If a liquidation does take place contrary to the wishes of an importer, the appropriate response is a timely protest, raising the issues which presumably are being pressed administratively and are the reason behind the request for suspension.

What the plaintiff is actually seeking to correct here is a purported error of judgment on the part of the district director in construing the law. The court's holding in *Fibrous Glass Products, Inc.* v. *United States*, 63 Cust. Ct. 62, 64–65, C.D. 3874 (1969), finds substantial application to the case at bar:

> Plaintiff seeks to have his entry reliquidated in conformity with the decision in C.A.D. 809 [*United States* (*Index Industrial Corp., Party in Interest*) v. *National Starch Products, Inc.*, 50 CCPA 1 (1962)], contending that the collector by classifying the merchandise in this case differently from similar merchandise in C.A.D. 809 had made a mistake of fact. Plaintiff's request for relief to correct a mistake of fact under section 1520(c)(1) filed nine and a half months after liquidation is actually an attempt to correct an error of judgment on the part of the collector in making a classification of the merchandise under the wrong paragraph of the Tariff Act of 1930, which is a mistake in the applicable law. A finding that merchandise is covered by a certain paragraph of the tariff act is in the nature of a conclusion of law. *United States* v. *Imperial Wall Paper Co.*, 14 Ct. Cust. Appls. 280, T.D. 41886 (1926). Section 1520(c)(1) expressly excepts mistakes of law from its coverage. Plaintiff's remedy was to file a protest under section 1514 of Title 19 of U.S.C.A. (section 514, Tariff Act of 1930, as amended) within sixty days after liquidation.
>
> Since plaintiff is seeking to correct an error amounting to an error in the construction of a law and its protest was filed after the expiration of the time limitation imposed by section 1514 of Title 19 of U.S.C.A. (section 514, Tariff Act of 1930, as amended) for the filing of protest to correct such errors the court is without power to entertain it. It, therefore, follows that the claim presented in plaintiff's protest is not before the court for decision, and the protest must be dismissed for lack of jurisdiction.

See also, *United States* v. *Wyman & Co.*, 4 Ct. Cust Appls. 264, T.D. 33485 (1913); *United China & Glass Co.* v. *United States*, 66 Cust. Ct. 207, 211, C.D. 4191 (1971).

In light of the above holding, and upon consideration of the facts at bar, it is obvious that the district director has no duty to correct his alleged error in response to requests for reliquidations as said error is a mistake in the construction of law and as such is not provided for in section 520(c)(1).

Plaintiff here has erroneously presumed that its claim is embraced by section 520(c)(1). Here, the record not only manifestly demonstrates, without contradiction, that no ground exists permitting suspensions of liquidations of the subject entries, but Mr. Petton, the responsible Team Leader Import Specialist and witness for the defendant, would not be compelled to honor a request to suspend liquidation, even if an importer requested him to do so and sent a letter requesting a ruling on the matter to the Bureau of Customs in Washington, D.C. Any time such a procedure was requested, it would be in the pure judgment of the appropriate customs official involved as to whether or not the same should be granted.

Thus, I conclude a decision of pure judgment, i.e., whether to suspend liquidation or not, even by request, is only capable of being judicially questioned by a timely protest against the liquidation itself, not by way of section 520(c)(1). *United States* v. *Imperial Wall Paper Co.*, 14 Ct. Cust. Appls. 280, T.D. 41886 (1926); *United China & Glass Co.* v. *United States*, *supra; Fibrous Glass Products, Inc.* v. *United States*, *supra; H. H. Elder & Co.* v. *United States*, 20 Cust. Ct. 61, C.D. 1084 (1948).

Consequently, the failure to suspend the herein liquidations and the liquidations themselves cannot constitute any conduct correctable under section 520(c)(1), and accordingly, plaintiff's sole remedy was the filing of a timely protest pursuant to section 514, Tariff Act of 1930.

Judgment will be entered accordingly.

Decisions of the United States Customs Court

Custom Rules Decisions

(C.R.D. 73–38)

PHILIP J. BERNSTEIN ENTERPRISES *v.* UNITED STATES

OPINION AND ORDER ON DEFENDANT'S MOTION FOR LEAVE TO FILE OUT OF TIME A MOTION FOR A MORE DEFINITE STATEMENT

Court Nos. R64/11956, etc.

[Motion denied; complaints stricken, *sua sponte*.]

(Dated December 26, 1973)

Cassel and Benjamin (*Julian R. Benjamin* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Glenn E. Harris*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved for leave to file out of time a motion for a more definite statement in the form of amended complaints to be filed by plaintiff. No opposition or other response to defendant's motion has been interposed on behalf of plaintiff. However, defendant's motion must be denied.

It has been noted from the certificate of service attached to defendant's motion that plaintiff's attorneys of record, Cassel and Benjamin, have not been served with a copy of the motion at their office address, Suite 501 Flagler Federal Building, 111 Northeast 1st Street, Miami, Florida 33132, as required by rule 4.1(a)(2). See *Philip J. Bernstein Enterprises* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–34 (1973). Plaintiff's attorneys, therefore, have not had an opportunity to respond to defendant's motion.

Furthermore, an examination of the court record discloses that these cases were partially tried at a Miami docket on March 29, 1965. Hence, the cases "shall be further processed and governed in accordance with

the law and with the rules of the court in effect prior to October 1, 1970". Rule 14.9(b)(1).

Rule 14.9(b)(2) provides, so far as pertinent:

> Actions in which, in open court, a witness was sworn or evidence was admitted prior to October 1, 1970 * * * shall be deemed to be actions in which trials have commenced prior to October 1, 1970.

At the hearing in Miami, Florida in 1965 plaintiff was sworn as a witness; evidence was admitted, but the trial was not concluded. Hence, this is an action in which trial has "commenced" prior to October 1, 1970 within the purview of rule 14.9(b)(2). Upon adjournment of the Miami hearing, the cases were continued to the next docket. Subsequently these cases were suspended under *Continental Forwarding, Inc.* v. *United States*, Reap. No. R58/23790, 46 Cust. Ct. 579, R.D. 9910 (1961), *rem'd*, 52 Cust. Ct. 629, A.R.D. 171 (1964), *aff'd*, *United States* v. *Continental Forwarding, Inc.*, 53 CCPA 105, C.A.D. 885 (1966), which test case was, in turn, suspended under *Continental Fwdg. Company et al.* v. *United States*, Reap. No. R60/2082, 62 Cust. Ct. 915, R.D. 11659, 297 F. Supp. 1396 (1969), *aff'd*, *United States* v. *Continental Fwdg. Company et al.*, 64 Cust. Ct. 838, A.R.D. 270, 311 F. Supp. 956 (1970), *aff'd*, 59 CCPA 178, C.A.D. 1063, 463 F.2d 1129 (1972). Notwithstanding the aforementioned suspensions, these cases "shall be further processed and governed in accordance with the law and with the rules of the court in effect prior to October 1, 1970" pursuant to rule 14.9(b)(1), rather than processed under rule 14.9(c)(2), providing for the transfer of certain cases to the suspension disposition file.*

Complaints and motions for a more definite statement were not provided for by the rules in effect prior to October 1, 1970. Consequently, the complaints herein were improperly filed, and therefore they will be stricken, *sua sponte*.

In light of the foregoing circumstances, it is hereby ORDERED:

1. Defendant's motion for leave to file out of time a motion for a more definite statement is denied;

2. The complaints, improperly filed in these actions, are stricken, *sua sponte*.

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*Rule 14.9(c)(2) provides: *"Trials Not Commenced:* All actions in which trials have not commenced prior to October 1, 1970 shall, as of that date and for purposes of this rule, be deemed to be in one of the following two subcategories: * * * (2) Actions suspended pending the final determination of another action. Such actions shall remain suspended until the final determination of the action under which they were suspended, at which time they shall be transferred to the suspension disposition file in accordance with Rule 14.8".

(C.R.D. 73-39)

ARTHUR J. FRITZ & CO.
THOMAS JOSEPH WELSH FOREST PRODUCTS } *v.* UNITED STATES

OPINION AND ORDER ON DEFENDANT'S MOTION TO STRIKE COMPLAINT

Court No. 70/14952

[Motion denied, upon condition.]

(Dated December 26, 1973)

Glad, Tuttle & White (*John McDougall* of counsel) for the plaintiffs.
Irving Jaffe, Acting Assistant Attorney General (*David B. Greenfield*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to strike the complaint filed in this action. The basis of the motion is that the complaint was filed by the firm of Glad & Tuttle, whereas the firm of Glad, Tuttle & White filed a notice of appearance for plaintiffs. Defendant contends that there is "no record of any notice of substitution filed with this Court replacing the firm of Glad, Tuttle & White, as attorney of record". Admittedly, no notice of substitution, as provided for in rule 16.3(f), has been filed.[1]

The Government's position is that Glad, Tuttle & White is a law firm distinct and separate from Glad & Tuttle. In support of such position defendant states: "It is a general rule of partnership law that even if there are some partners in common, if there is a partner not common to both partnerships, the result is separate and distinct partnerships. Cf. *Maryland Casualty Co.* v. *Glassell-Taylor Co.*, 63 F. Supp. 718 (D.C. La., 1945)".

Thus, argues defendant, "when Mr. White entered into a partnership with Mr. Glad and Mr. Tuttle, the partnership of Glad, Tuttle & White was formed. This partnership is separate and distinct from that of Glad & Tuttle". Further, defendant insists that it "is placed in a position wherein it does not know which firm to serve papers on, or if it should be forced to effect a duplicate service whenever this situation arises".

[1] Rule 16.3(f) provides: "Substitution of Attorneys: A party to any action who may desire to substitute an attorney in place of the one of record may do so by filing a notice therefor expressing his consent, signed by himself and the attorney of record. The notice shall be substantially in the form as set forth in Appendix G. If the consent of the previous attorney of record is annexed to or endorsed on the notice, substitution shall be accomplished by an appropriate entry on the docket of the court. A notice of appearance shall be filed by the substituted attorney. * * *"

In opposition to defendant's motion, Messrs. Glad & Tuttle represent: "The firm of Glad, Tuttle & White is identical to Glad & Tuttle insofar as a business entity remains so through time [sic], with the exception that Mr. White achieved partnership status during the year 1971. Before that Mr. Glad, Mr. Tuttle and Mr. White were members of the bar of this Honorable Court and they remain so today". Moreover, it may be observed that the firm of Glad, Tuttle & White is located at the same office address as Glad & Tuttle.

In *Baruch Petranker Import Co., Inc., et al.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73-33 (1973), the legal issue was the same as presented here, but the factual situation was the reverse. Thus, in the prior case, the protest was filed by Glad & Tuttle, whereas the complaint was filed by Glad, Tuttle & White. Under those circumstances, it was held:

> * * * there is nothing in rule 16.3 even remotely suggesting that the addition of a new partner to a law firm automatically "triggers" the provisions of paragraph (f) for notices of substitution and appearance without regard to whether a new and distinctly separate law firm has been created. Here the firm of Glad, Tuttle & White is represented to be "identical" to Glad & Tuttle except, of course, for the addition of Mr. White, a new partner, to the firm. Hence, if defendant's interpretation of rule 16.3(f) were correct, it is apparent that Glad & Tuttle would be consenting to a substitution by virtually the same firm—an unjustifiable result.

However, I wish to stress that despite the representations of plaintiffs' counsel that in 1971 Glad & Tuttle became "Glad, Tuttle & White", and the latter firm is "identical" to the former, the court's records show that many papers are currently being signed and filed by "Glad & Tuttle", *including the very complaint filed in this action* (*on October 31, 1972*), *and the very response interposed in this matter* (*on October 19, 1973*) *in opposition to defendant's motion to strike!*

Although in *Baruch Petranker*, "Glad & Tuttle" and "Glad, Tuttle & White" were considered as the same law firm *for purposes of rule 16.3*, the inconsistency in the firm name of plaintiffs' counsel causes much confusion respecting whether there is in fact one law firm using two names, or indeed to distinct and separate law firms, as asserted by defendant. Neither defendant nor the court should have to endure the confusion and chaos engendered by counsel's heedlessly signing some papers as "Glad, Tuttle & White" and other papers as "Glad & Tuttle" *in the very same action*. Such careless practice—resulting in a spate of unnecessary motions—will not be countenanced or condoned. But at this juncture of the case, I feel that justice would not be served by invoking the drastic remedy sought by defendant of striking the complaint.

As stated in its memorandum, "[p]laintiff [sic] has no objection to filing an amended complaint under the name of Glad & Tuttle [sic] or alternatively to Glad, Tuttle & White being deemed attorney of record". However, this proposed solution of the problem created by plaintiffs' counsel raises more questions than it resolves. Consequently, I shall treat *nunc pro tunc* plaintiffs' complaint as having been filed by Glad, Tuttle & White, strictly conditional upon the consistent use of only that firm name in all papers filed hereafter in this case. Accordingly, defendant's motion to strike the complaint is denied, *at this time.*

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 31, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1091	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	67/10159, etc.	Item 610.80 19%	Item 608.25 10.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1092	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	67/10160, etc.	Item 610.80 19%	Item 608.25 10.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1093	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	67/90351, etc.	Item 610.80 19%	Item 608.25 10.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1094	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	69/33181, etc.	Item 610.80 17%	Item 608.25 9.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1095	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	69/48865	Item 610.80 17%	Item 608.25 9.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1096	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	70/14969, etc.	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1097	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	70/15280	Item 610.80 14%	Item 608.25 7.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1098	Landis, J. December 27, 1973	J. Gerber & Co., Inc.	70/42436, etc.	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1099	Landis, J. December 27, 1973	Silbo Steel Corporation	67/38056	Item 610.80 19%	Item 608.25 10.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1100	Landis, J. December 27, 1973	Silbo Steel Corporation	67/51820, etc.	Item 610.80 19%	Item 608.25 10.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings

P73/1101	Landis, J. December 27, 1973	Silbo Steel Corporation	68/389, etc.	Item 610.80 19%	Item 608.25 10.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1102	Landis, J. December 27, 1973	Silbo Steel Corporation	69/33184, etc.	Item 610.80 15.5%	Item 608.25 8.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1103	Landis, J. December 27, 1973	Silbo Steel Corporation	70/46912, etc.	Item 610.80 14%	Item 608.25 7.5%	J. Gerber & Co., Inc., et al. v. U.S. (C.D. 3773, aff'd C.A.D. 1013)	Jacksonville (Tampa) Iron and steel forgings
P73/1104	Maletz, J. December 27, 1973	National Silver Co. et al	65/9419, etc.	Item 651.75 Various ad valorem equivalents set out in schedule A, attached to decision and judgment in column headed "Assessed Rate"	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Francisco Flatware sets, barbeque sets, tool sets, etc.
P73/1105	Newman, J. December 27, 1973	Air-Sea Forwarders, Inc. American Lowa Co.	70/3717	Item 700.35 9.5%	Item 700.35 9.5%	Judgment on the pleadings (motion by defendant)	Los Angeles Certain footwear
P73/1106	Boe, C. J. December 28, 1973	Castelazo & Associates The Westbrass Co.	70/42601	Item 657.35 0.8¢ per lb. plus 10.5%	Item 654.00 7%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Balljoint showerheads
P73/1107	Boe, C. J. December 28, 1973	International Mercantile Corp.	70/2580	Item 657.35 1¢ per lb. plus 12%	Item 654.00 8%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	San Diego Adjustable showerheads

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1108	Boe, C. J. December 28, 1973	Lorie Imports, Inc.	71-8-00750	Item 774.60 11.5%	Item 772.35 8.5% (except as to entry No. 101413 in protest No. 117128)	Judgment on the pleadings Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	Los Angeles Merchandise invoiced "mattress bags"
P73/1109	Boe, C.J. December 28, 1973	The Westbrass Co.	70/31012	Item 657.35 1¢ per lb. plus 12%	Item 654.00 8%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Brass adjustable showerheads
P73/1110	Boe, C.J. December 28, 1973	The Westbrass Co.	70/31066	Item 657.35 1¢ per lb. plus 12%	Item 654.00 8%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Brass shoe strainers and balljoint showerheads
P73/1111	Boe, C.J. December 28, 1973	The Westbrass Co.	70/53263	Item 657.35 8¢ per lb. plus 10.5%	Item 654.00 7%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Adjustable showerheads
P73/1112	Boe, C.J. December 28, 1973	The Westbrass Co.	71-8-00798	Item 657.20 13% Item 657.35 0.8¢ per lb. plus 10.5%	Item 653.95 11.5% Item 654.00 7%	Judgment on the pleadings The Westbrass Company v. U.S. (C.D. 4293)	Los Angeles Merchandise described as flat strainer, inserts for duo strainers, or steel strainer body; showerhead or C.P. strainer
P73/1113	Richardson, J. December 28, 1973	Fedtro, Inc., et al.	68/8757, etc.	Item 685.90 17.5% (items marked "A") Item 684.70 15%, 13%, 12% or 10% (items marked "B")	Item 685.70 8.5% (items marked "A") Item 688.40 11.5%, 10%, 9% or 8% (items marked "B")	Fedtro, Inc. v. U.S. (C.A.D. 1028) (items marked "A") Agreed statement of facts (items marked "B")	New York 4-way flasher switches (items marked "A") Transistorized battery operated portable megaphones (items marked "B")

P73/1114	Maletz, J. December 28, 1973	The Akron	66/69720, etc.	Item 651.75 Various ad valorem equivalent rates set out in schedule of cases, attached to decision and judgment in column headed "Assessed Rate"	Item 651.75 At appropriate compound rate set forth in said schedule	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, barbeques sets, tool sets, etc.
P73/1115	Maletz, J. December 28, 1973	The Akron	68/4853, etc:	Item 651.75 Various ad valorem equivalent rates	Item 651.75 At appropriate compound rate set forth in schedule of cases, attached to decision and judgment	Import Associates of America et al. v. U.S. (C.A.D. 961)	Los Angeles Flatware sets, barbeque sets, tool sets, etc.
P73/1116	Maletz, J. December 28, 1973	Gambles Import Company	68/42358, etc.	Item 651.75 Various ad valorem equivalent rates	Item 651.75 At appropriate compound rate set forth in schedule of cases, attached to decision and judgment	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets, barbeque sets, tool sets, etc.
P73/1117	Maletz, J. December 28, 1973	W.T. Grant Co.	70/59821	Item 523.94 27%	Item 711.55 16%	Judgment on the pleadings F. W. Woolworth Company v. U.S. (C.D. 4245)	New York Alabaster desk barometer statuettes

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1118	Maletz, J. December 28, 1973	Import Associates of America, Inc.	67/41482	Item 737.30 18% (as entireties)	Appraisement and liquidation not according to law; protests dismissed as premature; entries returned to district director for appropriate administrative action	Summary judgment U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	San Francisco Stuffed animal radios with batteries; separately dutiable articles
P73/1119	Maletz, J. December 28, 1973	Import Associates of America, Inc.	67/84014, etc.	Item 737.30 18% (as entireties)	Appraisement and liquidation not according to law; protests dismissed as premature; entries returned to district director for appropriate administrative action	Summary judgment U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	San Francisco Stuffed animal radios with batteries; separately dutiable articles
3/1120	Maletz, J. December 28, 1973	Mattel, Inc.	71-10-01225, etc.	Item 740.38 44%	Item 737.90 28%	Agreed statement of facts	Los Angeles Plastic housing portions of "Jewelry Kiddles" toys, chiefly used for amusement of children or adults

P73/1121	Maletz, J. December 28, 1973	Mercury Radio & Battery Corp.	66/78663, etc.	Item 737.30 18% (as entire ties)	Appraisement and liquidation not according to law; protests dismissed as premature; entries returned to district director for appropriative administrative action.	Summary judgment U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	San Francisco Stuffed animal radios with batteries; separately dutiable articles
P73/1122	Maletz, J. December 28, 1973	North American Foreign Trading Corp.	68/14282, etc.	Item 737.30 18% (as entire-ties)	Appraisement and liquidation not according to law; protests dismissed as premature; entries returned to regional commissioner for appropriate administrative action	Summary judgment U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	New York Stuffed animal radios with batteries; separately dutiable articles
P73/1123	Maletz, J. December 28, 1973	Nuvox Electronics Corp	69/51493	Item 653.40 19%	Item 688.40 11.5%	Agreed statement of facts	New York Lamp radio, model 9576

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1124	Newman, J. December 28, 1973	Ford Motor Company	72-11-02260, etc.	Item 657.20 11% or 9.5% (items marked "A") Item 657.20 9.5% (items marked "B" and "C")	Item 692.30 Free of duty (items marked "A" and "B") Item 666.00 Free of duty (items marked "C")	Ford Motor Company v. U.S. (C.D. 4380) (items marked "A" "B" and "C")	Detroit Tool boxes (items marked "A") Power Steering Reservoirs (items marked "B" Combined cabs (items marked "C")
P73/1125	Re, J. December 28, 1973	Border Brokerage Co., Inc.	69/5332	Item 207.00 15%	Item 202.53 4%	Judgment on the pleadings	Blaine (Seattle) Balsa Lumber, edge-glued or end-glued, not drilled or treated and not over 6 ft. in length or over 15 inches in width

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/368	Maletz, J. December 28, 1973	Kanematsu Gosho, Inc.	R69/2677	Constructed value	$2.96, net packed, each radio $0.10, net packed, each battery $0.07, net packed, each earphone	Judgment on the pleadings	New York Radios assembled in and exported from Taiwan, together with earphones and batteries
R73/369	Maletz, J. December 28, 1973	F. W. Myers & Co. Inc.	71-7-00522, etc.	Constructed value: Invoiced unit F.O.B. price	Not stated	Agreed statement of facts	New York Norelco 7 transistor cassette tape recorders
R73/370	Maletz, J. December 28, 1973	Plywood & Door Northern Corporation	R63/8196, etc.	Export value	Unit value set forth in column 4 of schedule A, attached to decision and judgment, less the invoiced ocean freight and insurance, prorated	Plywood & Door Northern Corporation v. U.S. (R.D. 10863)	Los Angeles Birch plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	REAP NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/371	Re, J. December 28, 1973	Borneo Sumatra Trading Co., Inc., et al.	R60/3284, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Seattle Japanese plywood
R73/372	Re, J. December 28, 1973	Borneo Sumatra Trading Co., Inc.	R64/15651, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Chicago Japanese plywood

Tariff Commission Notice

Investigation by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *January 10, 1974.*

The appended notice relating to an investigation by the United States Tariff Commission is published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[337–L–69]

CERTAIN GARAGE DOOR LOCKS

Notice of complaint received

The United States Tariff Commission hereby gives notice of the receipt, on November 5, 1973, of a complaint under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), filed by National Lock Hardware, a Division of Keystone Consolidated Industries, Inc., of Rockford, Illinois, alleging unfair methods of competition and unfair acts in the importation and sale of certain garage door locks which are embraced within the claims of U.S. Letters Patent 3,306,086 owned by the complainant. Globe International Corporation, 3025 Darnell Road, Philadelphia, Pennsylvania, has been named as importing and offering for sale the subject product.

In accordance with the provisions of section 203.3 of its *Rules of Practice and Procedure* (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the issues raised in the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so, whether the Commission should recommend to the President the issuance of a temporary exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to

the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than February 14, 1974.

Extensions of time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436. A signed original and twenty-five (25) true copies of each document must be filed.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued January 2, 1974.

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